Remarks

The February 19, 2008 rejection only raised issues with respect to 35 USC 112 and, importantly, all the claims were deemed to be patentable over the prior art. Applicants filed a Response, which addressed the 35 USC 112 issues. Now, a minor 35 USC 112 issue is raised, which is corrected by the above amendments. The Examiner, however, reverses course and rejects the claims as being obvious in view of West (US 2004/0097472) and Victor (US 6,613,359). This rejection is without merit.

As the Examiner previously correctly concluded, West does not teach or suggest the present composition. Now, it appears that a search was conducted for any reference that mentioned tetrasodium EDTA, no matter its application. Not surprising, a reference was located and from that the Action rejects the claim. The Action, however, does not articulate any reasoning (which is required under *KSR*) why it would have been obvious to combine West and Victor. The only reasoning mentioned in the Action is:

> It would be obvious to one of ordinary skill in the art at the time of the invention was to prepare compositions using the tocopherol phosphate of example 18 using water and neutralizer and add chelating agent. It would be obvious to one of ordinary skill in the art to modify the compositions of PGPUB in examples and substitute disodium salt instead of the free acid expecting same beneficial effect. One of ordinary skill in the cosmetic would use a salt since salts are more soluble in water than the free form and expecting that the bioavailablity of the salt is more than the free acid form. This is a prima facie case of obviousness. (Aug. 1, 2008 Office Action, p. 3)

The above cited passage is devoid of any reasoning; instead, it merely presents conclusions. Thus, the Action does not establish a *prima facie* case of obviousness. The Action does not present any reasoning why one of skill in the art with West in front of them would look to Victor and, pick from the many ingredients set forth in Victor, tetrasodium EDTA. In fact, Applicants contend that one of skill in the art would not look to Victor for any teaching with respect to modifying West. Victor teaches cosmetic preparations that use optically activated particles, i.e., non soluble particles that do not pass through the skin barrier. Instead, the optically activated particles sit within the skin imperfections and reduce the visual perception of skin imperfections (*see* Fig. 5, col. 9:18-31). On the other hand, West seeks to improve the bioavailability of hydroxylated actives by reacting one or more phosphate derivatives with one or more complexing agents (*see e.g.* claim 12). Thus, the two references are not related and each teaches away from the other. In view of the disparate teachings of the cited references and the lack of any reasoning to support the hypothesis that one of skill in the art would pick among the many ingredients found in Victor and add that to the completely different composition of West, a *prima facie* case of obviousness is not established. Applicants respectfully request withdrawal of the rejection.

In short, the Examiner was correct when she previously concluded that the claims were allowable. Applicants believe that the claims are allowable and notification to that effect is requested. The Examiner is requested to contact the undersigned attorney at (312) 321-4276 to resolve any remaining issues.

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